

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JANUARY 1, 2018, TO JUNE 30, 2018

IN THE MATTER OF

COWBOY AG LLC

D/B/A

COWBOY TOYOTA AND COWBOY SCION

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT, THE TRUTH
IN LENDING ACT, THE CONSUMER LEASING ACT, REGULATION M,
AND REGULATION Z

Docket No. C-4639; File No. 172 3009
Complaint, January 4, 2018 – Decision, January 4, 2018

This consent order addresses Cowboy AG LLC's Spanish-language advertising that only provided disclosures in fine-print English. The complaint alleges that respondent violated Section 5(a) of the Federal Trade Commission Act by representing in its Spanish-language advertisements that: (1) consumers could purchase new 2016 automobiles with no down payments, (2) that advertised low monthly payments were available to those who financed automobile purchases, (3) that advertised interest rates, monthly payments, and other terms were available to consumers with bad credit, and (4) that certain new 2016 model year Toyotas were available for purchase in 2017. The complaint further alleges that respondent's credit sale advertisements violated the Truth in Lending Act and Regulation Z by failing to disclose or to disclose clearly and conspicuously required terms. The consent order prohibits the respondent from misrepresenting the costs of financing the purchase or the leasing of automobiles or any qualifications or restrictions on advertised merchandise.

Participants

For the *Commission*: *M. Hasan Aijaz and James R. Golder.*

For the *Respondent*: *Derek Rollins, Shackelford, Bowen, McKinley & Norton.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that Cowboy AG LLC, a Texas limited liability company, doing business as Cowboy Toyota and Cowboy Scion, (Respondent) has violated provisions of the Federal Trade Commission Act (FTC Act); the Truth in Lending Act (TILA) and its implementing Regulation Z; and the Consumer Leasing Act (CLA) and its implementing Regulation M; and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Cowboy AG LLC, doing business as Cowboy Toyota and Cowboy Scion, is a Texas limited liability company with its principal office or place of business at 9325 East R.L. Thornton Freeway, Dallas, Texas 75228.

2. The acts or practices of Respondent alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. Since at least October 2016, Respondent has disseminated or caused to be disseminated advertisements to the public promoting credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “credit sale,” “closed-end credit,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

4. Since at least October 2016, Respondent has disseminated or caused to be disseminated advertisements to the public promoting consumer leases for automobiles, as the terms “advertisement” and “consumer lease” are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.

5. Respondent placed full-page newspaper advertisements in *Al Día*, a regional Dallas, Texas area Spanish-language newspaper published by the *Dallas Morning News*. *Al Día* is a free subscription newspaper that is delivered twice weekly on Wednesdays and Saturdays. *Al Día* makes current editions available on its *aldiadallas.com* website. Exhibits A and B are representative examples of Respondent’s full-page Spanish-

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language *Al Día* ads from October and November 2016. The full-page *Al Día* ads measured approximately 22” high by 12” wide.

6. Respondent ran frequent Spanish-language advertisements in *Al Día*, including during its “Mes de la Herencia Hispana!” (Hispanic Heritage Month!) sales event and its “Acción de Gracias” (Thanksgiving) sales event. See Exhibits A and B, respectively. Although Respondent’s ads evolved, since at least October 2016, the full-page Spanish-language newspaper ads contained substantially similar statements, offers, depictions, and fine print disclaimers.

7. In numerous instances, since at least October 2016 until at least July 2017, Respondent’s advertisements in *Al Día* prominently touted the availability of various deals to consumers with bad credit, with no down payment, 0% interest rates for 60- or 72-month periods, low monthly payments amounts, and other favorable terms. In numerous instances, however, Respondent’s advertisements included buried fine print disclaimers, including a lengthy fine print disclaimer written only in English, that contradicted its advertisements’ more prominent claims.

Representative Advertisement for “Mes de la Herencia Hispana!” (Hispanic Heritage Month!) Event

8. The top section of Respondent’s full-page October 2016 Hispanic Heritage Month *Al Día* advertisements, excerpted from Exhibit A, touted that Respondent’s deals were available to individuals with bad credit without requiring a down payment, a Social Security number, or a driver’s license. For example, Respondent made the following representations: “Sin Engache,” “Con Buen o Mal Credito,” “Sin Seguro Social,” “Sin Licencia de conducir,” “Financiamos,” and “Aceptamos Tax ID.” These representations translate to English as follows: “Without Down Payment,” “With Good or Bad Credit,” “Without Social Security,” “Without Driver’s License,” “We Finance,” and “We Accept Tax ID”:

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Exhibit B is an example of a substantially similar Thanksgiving ad that ran in *Al Día* in November 2016. In December 2016, Respondent altered its advertisements and moved language concerning financing to individuals with good or bad credit without requiring a down payment, a Social Security number, or a driver's license to a prominent border area surrounding the featured new Toyota vehicles.

9. In the second section of Respondent's full-page 2016 Hispanic Heritage Month *Al Día* advertisements, Respondent announced offers for new 2016 Toyota Tundras, Camrys, and Corollas. Respondent touted the availability of 0% interest rates over 60- or 72-month periods and low monthly payment amounts, suggesting that consumers could obtain all of these terms when financing to purchase these automobiles:



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This ad section was excerpted from Exhibit A, Respondent's Hispanic Heritage Month ad in *Al Día* in October 2016.

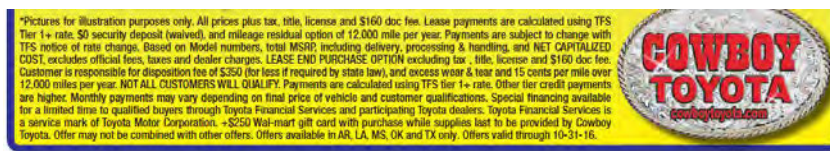
This section of the advertisement translates to English as follows:

NEW 2016 TOYOTA TUNDRA 0% INTEREST FOR 60 MONTHS CCA 2 Years Maintenance Included \$250 Gift Card with your purchase! \$379/MONTH* Only \$999 down payment	NEW 2016 TOYOTA TACOMAS AVAILABLE 2 Years Maintenance Included \$250 Gift Card with your purchase! LOW PRICES
NEW 2016 TOYOTA CAMRY 0% INTEREST FOR 72 MONTHS CCA 2 Years Maintenance Included \$250 Gift Card with your purchase! \$199/MONTH* Only \$1,999 down payment	NEW 2016 TOYOTA COROLLA 0% INTEREST FOR 72 MONTHS CCA 2 Years Maintenance Included \$250 Gift Card with your purchase! \$179/MONTH* Only \$999 down payment

10. In Paragraph 8 above, Respondent prominently stated that there were no down payments ("Sin Engache") in large print on the top of its full-page newspaper ads. The section of the advertisement reproduced in Paragraph 9 contains fine print disclaimers revealing that the featured vehicles require down payments of either \$999 or \$1,999, thus contradicting the advertisement's prominent statements that no down payments were required.

11. Additionally, in the advertisement section excerpted in Paragraph 9 above, Respondent placed asterisks next to the monthly payment amounts. These asterisks appear to refer to a lengthy disclaimer buried in fine print at the bottom of the ad. Although the more prominent representations in Paragraphs 8 and 9 appeared in Spanish, this fine print disclaimer was written only in English. As shown in Exhibit A, the disclaimer stated the following:

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As reproduced in larger font, the disclaimer states:

*Pictures for illustration purposes only. All prices plus tax, title, license and \$160 doc fee. Lease payments are calculated using TFS Tier 1+ rate, \$0 security deposit (waived), and mileage residual options of 12,000 mile per year. Payments are subject to change with TFS notice of rate change. Based on Model numbers, total MSRP, including delivery, processing & handling, and NET CAPITALIZED COST, excludes official fees, taxes and dealer charges. LEASE END PURCHASE OPTION excluding tax, title, license and \$160 doc fee. Customer is responsible for disposition fee of \$350 (for less if required by state law), and excess wear & tear and 15 cents per mile over 12,000 miles per year. NOT ALL CUSTOMERS WILL QUALIFY. Payments are calculated using TFS tier 1+ rate. Other tier credit payments are higher. Monthly payments may vary depending on final price of vehicle and customer qualifications. Special financing available for a limited time to qualified buyers through Toyota Financial Services and participating Toyota dealers. Toyota Financial Services is a service mark of Toyota Motor Corporation. +\$250 Wal-mart gift card with purchase while supplies last to be provided by Cowboy Toyota. Offer may not be combined with other offers. Offers available in AR, LA, MS, OK and TX only. Offers valid through 10-31-16.

Virtually identical English disclaimers appeared in each of Respondent's ads through at least August 2017.

12. The buried fine print disclaimer in Paragraph 11 reveals that Respondent was including a leasing term with its financing offers shown in Paragraph 9 above. Specifically, the low monthly payment amounts prominently touted in Respondent's advertisements were only available to consumers who lease the advertised motor vehicles, and not to consumers who finance to purchase the motor vehicles. The ads included other finance terms such as "0% INTEREST."

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13. Additionally, the buried fine print disclaimer in Paragraph 11 contradicts Respondent's more prominent representations, in Paragraph 8 above, that its offers were available to consumers with bad credit. Specifically, the disclaimer reveals that the advertised offer terms were only available to consumers eligible for the "TFS Tier 1+ rates." TFS Tier 1+ rates are available only to consumers with very good or excellent credit, such as those with Auto FICO scores of 720 or higher. Further, even if Spanish-speaking consumers were able to notice and read this fine print English statement, a reasonable consumer would be unlikely to understand the term "TFS Tier 1+ rates."

14. Respondent also advertised new 2016 Toyota Tundras, Tacomas, Camrys, and Corollas for sale in its January and early February 2017 *Al Día* advertisements. However, despite these representations, during this time period Respondent did not have any 2016 Toyota Tundras, Tacomas, Camrys, or Corollas available for sale.

15. Respondent's advertisements contained TILA triggering terms, such as "0% INTEREST FOR 60 MONTHS," but did not disclose, or did not disclose clearly and conspicuously, certain required TILA information, such as:

- a. The amount or percentage of down payment required;
- b. The terms of repayment, reflecting the repayment obligations over the full term of the loan, including any balloon payment; or
- c. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

16. Similarly, Respondent's advertisements contained CLA triggering terms, such as the low advertised monthly payment amounts, but did not disclose, or did not disclose clearly and conspicuously, certain required CLA information, such as:

- a. Whether the transaction advertised is a lease;

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- b. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
- c. Whether or not a security deposit is required;
- d. The number, amount, and timing of scheduled payments; or
- e. With respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

**VIOLATION OF THE FEDERAL TRADE COMMISSION
ACT****Count I****Misrepresentations Regarding Offers**

17. Through the means described in Paragraphs 5 through 16, Respondent has represented, directly or indirectly, expressly or by implication, the following regarding the vehicles it advertised for sale or lease:

- a. No down payment was required;
- b. The advertised low monthly payments were available to those who financed automobile purchases;
- c. The advertised interest rates, monthly payments, and other terms were available to consumers with bad credit; and
- d. New 2016 model year Toyota Tundras, Tacomas, Camrys, and Corollas were available for purchase at the time of the ads in 2017.

18. In fact, in numerous instances:

- a. A down payment was required;

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- b. The advertised low monthly payments were available only for automobile leases;
- c. The advertised interest rates, monthly payments, and other terms were available only to consumers with very good to excellent credit; and
- d. New 2016 model year Toyota Tundras, Tacomas, Camrys, and Corollas were not available for purchase at the time of the ads in 2017.

19. Therefore, the representations set forth in Paragraph 17 were false or misleading.

20. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATION OF THE TRUTH IN LENDING ACT AND
REGULATION Z**

21. Under Section 144 of the TILA and Section 226.24(d) of Regulation Z, as amended, advertisements promoting closed-end credit in consumer credit transactions are required to make certain disclosures ("TILA additional terms") if they state any of several terms, such as the monthly payment ("TILA triggering terms").

22. To the extent that Respondent's automobile sales advertisements promote closed-end credit, such as those described in Paragraphs 5 through 16, Respondent is subject to the requirements of the TILA and Regulation Z.

Count II

**Failure to Disclose or to Disclose Clearly and Conspicuously
Required Credit Information**

23. Respondent's automobile sales advertisements promoting closed-end credit, such as those described in Paragraphs 5 through 16, included TILA triggering terms, but failed to disclose, or to disclose clearly and conspicuously, additional terms required by

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the TILA and Regulation Z, including one or more of the following:

- a. The amount or percentage of the down payment;
- b. The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
- c. The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

24. Therefore, the practices set forth in Paragraph 23 of this Complaint violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended.

**VIOLATION OF THE CONSUMER LEASING ACT AND
REGULATION M**

25. Under Section 184 of the CLA and Section 213.7 of Regulation M, advertisements promoting consumer leases are required to make certain disclosures (“additional terms”) if they state any of the several terms, such as the amount of any payment (“CLA triggering terms”). 15 U.S.C. § 1667c; 12 C.F.R. § 213.7.

26. To the extent that Respondent’s automobile advertisements promote consumer leases, such as those described in Paragraph 5 through 16, Respondent is subject to the requirements of the CLA and Regulation M.

Count III

**Failure to Disclose or to Disclose Clearly and Conspicuously
Required Lease Information**

27. Respondent’s automobile advertisements promoting consumer leases, such as those described in Paragraphs 5 through 16, included CLA triggering terms, but failed to disclose or to disclose clearly and conspicuously additional terms required by

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the CLA and Regulation M, including one or more of the following:

- a. That the transaction advertised is a lease;
- b. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
- c. Whether a security deposit is required;
- d. The number, amount, and timing of scheduled payments; and
- e. With respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

28. Therefore, the practices set forth in Paragraph 27 of this Complaint violated Section 184 of the CLA, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

THEREFORE, the Federal Trade Commission, this fourth day of January, 2018, has issued this complaint against Respondent.

By the Commission.

Complaint

Exhibit A

6C - AL DÍA EDICIÓN DE FIN DE SEMANA 9/10/2016 www.aldiadallas.com

COWBOYTOYOTA.COM

Cowboy Toyota celebra:
MES DE LA HERENCIA
HISPANA!

Te esperamos para ayudarte a comprar tu carro!

Con La mejores ofertas del Metroplex!

Sin Engache **Con Buen o Mal Credito** **Sin Seguro Social**
Sin Licencia de conducir **Financiamos** **Aceptamos Tax ID**

NUEVO 2016 TOYOTA TUNDRA
0% DE INTERESES POR 60 MESES CCA
2 Años de Mantenimiento Incluidos
Tarjeta de Regalo de \$250 con su Compra!
\$379/MES*
Solo \$999 de Enganche

NUEVO 2016 TOYOTA TACOMAS DISPONIBLES
2 Años de Mantenimiento Incluidos
Tarjeta de Regalo de \$250 con su Compra!
BAJAS PRECIOS

NUEVO 2016 TOYOTA CAMRY
0% DE INTERESES POR 72 MESES CCA
2 Años de Mantenimiento Incluidos
Tarjeta de Regalo de \$250 con su Compra!
\$199/MES*
Solo \$1,299 de Enganche

NUEVO 2016 TOYOTA COROLLA
0% DE INTERESES POR 72 MESES CCA
2 Años de Mantenimiento Incluidos
Tarjeta de Regalo de \$250 con su Compra!
\$179/MES*
Solo \$999 de Enganche

Nuestros Carros Autos Usados - Mejores Precios del Metroplex!

\$7,985 2012 Chevy Cruze LS 1 Owner, Clean, Must See #7511024	\$9,798 2010 Toyota Corolla LE 1 Owner, Clean, Must See #75146	\$12,985 2013 Honda Odyssey LX Full Equip, New Tires, Loaded for Home #1000734	\$13,304 2007 Toyota Highlander 1 Owner, Roof Rack, Tint, Home Body #7415554	\$14,985 2014 Ford Escape SE 1 Owner, Low Miles, Must See #1527054	\$15,985 2015 Dodge Journey SXT 1 Owner, Look, For Home, Must See #154753
\$16,985 2011 Toyota Sienna XLE 1 Owner, Family Car, Clean #7571158	\$18,968 2013 Chevy Camaro 2LS 1 Owner, Sporty, Must See #1568264	\$22,985 2015 Toyota Sienna LE 1 Owner, Family Car, Must See #751462	\$23,444 2016 Dodge Charger SXT 1 Owner, 21K Miles, Must See #751473	\$23,985 2014 BMW 328i 1 Owner, 52K Miles, Looking for Home #1522854	\$24,495 2016 RAM 1500 SLT 1 Owner, Looking for Home, Low Miles #751554
\$25,983 2014 Chevy Silverado 1500 1 Owner, Low Miles, Tint, Home Body #7511493	\$26,985 2013 Toyota Tundra 1 Owner, 52K Miles, Must See #1007616	\$27,799 2009 Cadillac Escalade Low Miles, Lin. Bar, Roof Rack #1518249	\$38,921 2015 Chevy Tahoe 1 Owner, Low Miles, Just 3K miles today #7515449	\$39,985 2014 Chevy Silverado 1500 Looking for New Home, Clean #15172554	\$49,977 2016 GMC Yukon Running Board, Roof Rack, Must See #151659

9525 E. R.L. THORNTON FRWY. DALLAS, TX 75228 **866-521-1870**

COWBOY TOYOTA
cowboytoyota.com

*Pictures for illustration purposes only. All prices plus tax, title, license and \$160 doc fee. Lease payments are calculated using TFS Tier 1s rate, \$0 security deposit (waived), and 12,000 mile per year. Payments are subject to change with TFS notice of rate change. Based on Model numbers, total MSRP, including delivery, processing & handling, and NET CAPITALIZED COST, excludes official fees, taxes and dealer charges. LEASE END PURCHASE OPTION: excluding tax, title, license and \$160 doc fee. Customers responsible for disposition fee of \$350 (for less if required by state law), and excess wear & tear and 15 cents per mile over 12,000 miles per year. NOT ALL CUSTOMERS WILL QUALIFY. Payments are calculated using TFS tier 1s rate. Other tier credit payments are higher. Monthly payments may vary depending on final price of vehicle and customer qualifications. Special financing available for a limited time to qualified buyers through Toyota Financial Services and participating Toyota dealers. Toyota Financial Services is a service mark of Toyota Motor Corporation. \$250 Mall-mart gift card with purchase while supplies last to be provided by Cowboy Toyota. Offer may not be combined with other offers. Offers available in AR, LA, MS, OK and TX only. Offers valid through 10-31-16.

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Exhibit B

6C - ALDÍA EDICIÓN DE FIN DE SEMANA 6/11/2016 www.aldiadallas.com

COWBOYTOYOTA.COM











COWBOY TOYOTA TE REGALA: *Tarjeta de \$250 de regalo con su compra! A comer pavo y ahorrar con Cowboy Toyota 866-521-1870

"Cena" de Acción de Gracias para toda tu familia*

Sin Enganche

Con Buen o Mal Credito

Sin Seguro Social

Sin Licencia de conducir

Financiamos

Aceptamos Tax ID

NUEVO 2016 TOYOTA TUNDRA
0% DE INTERESES POR 60 MESES CCA
2 Años de Mantenimiento Incluidos



\$379/MES*

Solo \$950 de Enganche

NUEVO 2016 TOYOTA TACOMAS DISPONIBLES
2 Años de Mantenimiento Incluidos



BAJAS PRECIOS

NUEVO 2016 TOYOTA CAMRY
0% DE INTERESES POR 72 MESES CCA
2 Años de Mantenimiento Incluidos



\$199/MES*

Solo \$1,999 de Enganche

NUEVO 2016 TOYOTA COROLLA
0% DE INTERESES POR 72 MESES CCA
2 Años de Mantenimiento Incluidos



\$179/MES*

Solo \$999 de Enganche

Nuestros Carros Autos Usados - Mejores Precios del Metroplex!

 \$11,499 2012 Ford Fusion SE Techo conductor, Airbag Cond. Del. Ray Quin Var #1000024	 \$11,876 2009 Hyundai Tucson SE 1 Dueño, Buena, Ray Milage #1379424	 \$13,304 2007 Toyota Highlander 1 Dueño, Buena, Ray Milage a Coda #7410536	 \$14,985 2014 Ford Escape SE 1 Dueño, Ray Milage, Ray Quin Var #1027054	 \$16,499 2009 GMC Yukon XL XL, Buena, Ray Quin Var #1071144	 \$18,968 2013 Chevy Camaro 2LS 1 Dueño, Ray Quin Var, Ray Quin Var #1000024
 \$19,995 2007 Mercedes Benz CLS V8, Buena, Ray Quin Var #1000024	 \$23,444 2016 Dodge Charger SXT 1 Dueño, 21 KM Milage, Ray Quin Var #154470	 \$23,985 2014 BMW 328i 1 Dueño, 32K Milage, Ray Quin Var #1000024	 \$24,250 2014 Toyota Tacoma PreRunner Récord acceso a la Cabina, Auto, Almuerzo con Llave #1000024	 \$24,495 2016 RAM 1500 SLT 1 Dueño, Ray Quin Var, Ray Milage #1000024	 \$26,897 2014 Toyota Tacoma PreRunner Cadena Buena, V8, Auto #154470
 \$27,799 2009 Cadillac Escalade Ray Milage, Interior de Cuero, Buena #1000024	 \$27,888 2015 Toyota Tundra SR Cabina Buena, V8, Auto #1000024	 \$28,921 2015 Chevy Tahoe 1 Dueño, Ray Milage, Ray Quin Var #1000024	 \$29,777 2013 Toyota Tundra V8, Auto, Ray Quin Var, Ray Quin Var #1000024	 \$29,985 2014 Chevy Silverado 1500 8 de cuando en Ray Quin Var, Ray Quin Var #1000024	 \$29,977 2016 GMC Yukon E11 Buena, Buena, Ray Quin Var #154470

9525 E. R.L. THORNTON FRWY. DALLAS, TX 75228 866-521-1870

*Picture for illustration purposes only. All prices plus tax, title, license and \$350 doc fee. Lease payments are calculated using TFS Tier 14 rate. \$0 security deposit (required), and mileage residual option of 12,000 miles per year. Payments are subject to change with TFS notice of rate change. Based on Model numbers, total MSRP, including delivery, processing & handling, and NET CAPITALIZED COST, excludes official fees, taxes and dealer charges. LEASE END PURCHASE OPTION excluding tax, title, license and \$350 doc fee. Our buyer is not possible for disposition fee of \$350 for less than 3 years and 36,000 miles, and excess wear \$1 per year and .15 cents per mile over 12,000 miles per year. NOT ALL CUSTOMERS WILL QUALIFY. Payments are calculated using TFS Tier 14 rate. Other tier credit payments are higher. Monthly payments may vary depending on retail price of vehicle and customer qualifications. Special financing available for a limited time to qualified buyers through Toyota Financial Services and participating Toyota dealers. Toyota Financial Services is a service mark of Toyota Motor Corporation. +\$250 Mail-in rebate gift card with purchase of white supplies, last to be provided by Cowboy Toyota. Offer may not be combined with other offers. Offers available in AR, LA, MS, OK and TX only. Offers valid through 11-30-16.

COWBOY TOYOTA
cowboytoyota.com

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act (“FTC Act”); the Truth in Lending Act (“TILA”) and its implementing Regulation Z; and the Consumer Leasing Act (“CLA”) and its implementing Regulation M.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the FTC Act; the TILA and its implementing Regulation Z; and the CLA and its implementing Regulation M; and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Cowboy AG LLC, is a Texas limited liability company, also doing business as Cowboy Toyota and Cowboy Scion, with its principal office or place of business at 9325 East R.L. Thornton Freeway, Dallas, Texas 75228.

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2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER**Definitions**

For purposes of this Order, the following definitions shall apply:

- A. “Advertisement” shall mean a commercial message in any medium that directly or indirectly, expressly or by implication, promotes a consumer transaction.
- B. “Clearly and conspicuously” means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made visually or audibly.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

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5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.
 7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
- C. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes, as set forth in Section 226.2(a)(12) of Regulation Z, 12 C.F.R. § 226.2(a)(12), as amended.
- D. “Consumer lease” shall mean a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, as set forth in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
- E. “Lease inception” shall mean prior to or at consummation of the lease or by delivery, if delivery occurs after consummation.
- F. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- G. “Motor vehicle” shall mean:
1. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

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2. Recreational boats and marine equipment;
 3. Motorcycles;
 4. Motor homes, recreational vehicle trailers, and slide-in campers; and
 5. Other vehicles that are titled and sold through dealers.
- H. “Respondent” means Cowboy AG LLC, also doing business as Cowboy Toyota and Cowboy Scion, and its successors and assigns.

I.

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of motor vehicles, must not make any representation, expressly or by implication, that:

- A. Misrepresents the cost of:
1. Purchasing a motor vehicle with financing, including but not limited to the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment; or
 2. Leasing a motor vehicle, including but not limited to the total amount due at lease inception, amount down, down payment, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments.

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- B. Misrepresents any qualification or restriction on the consumer's ability to obtain represented financing or leasing terms, including but not limited to any qualification or restriction based on a consumer's credit score or credit history.
- C. Represents any financing or leasing term, unless the representation is non-misleading, and the advertisement clearly and conspicuously discloses all qualifications or restrictions on the consumer's ability to obtain the represented financing or leasing term, including but not limited to any qualifications or restrictions that Respondent's lender, lessor, or any other entity may impose based on a consumer's credit score or credit history. *Provided, further,* that, if a majority of consumers likely will not be able to meet a stated credit score or credit history qualification or restriction, the advertisement must clearly and conspicuously disclose that fact.
- D. Misrepresents the number of vehicles, makes, or models that are available for purchase or lease.
- E. Misrepresents any other material fact about the price, sale, financing, or leasing of any motor vehicle.

II.

IT IS FURTHER ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any advertisement for any extension of consumer credit, shall not in any manner:

- A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:

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1. The amount or percentage of the down payment;
 2. The terms of repayment; and
 3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term; or
- C. Fail to comply in any respect with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667.

III.

IT IS FURTHER ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any advertisement for any consumer lease, shall not in any manner:

- A. State the amount of any payment or that any or no initial payment is required prior to or at consummation or by delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously:
1. That the transaction advertised is a lease;
 2. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 3. The number, amounts, and timing of scheduled payments;

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4. Whether or not a security deposit is required; and
 5. That an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term; or
- B. Fail to comply in any respect with Regulation M, 12 C.F.R. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

IV.

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 15 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

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V.

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 15 years after the issuance date of this Order, Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (1) any designated point of contact; or (2) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.

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- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re Cowboy AG LLC, Docket No. C-4639.*

VI.

IT IS FURTHER ORDERED that Respondent must create certain records for 15 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent, for any business that Respondent is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Copies or records of all written consumer complaints concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;

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- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. All materials that were relied upon in disseminating the representation;
- F. All evidence in its possession or control that contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- G. For 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communication relates to Respondent's compliance with this Order;
- H. For 5 years from the date created or received, all records, whether prepared by or on behalf of Respondent, that tend to show any lack of compliance by Respondent with this Order; and
- I. All records necessary to demonstrate full compliance with each Provision of this Order, including all submissions to the Commission.

VII.

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate

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directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.

- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VIII.

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on January 4, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years; and
- B. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (FTC) has accepted, subject to final approval, an agreement containing a consent order from Cowboy AG LLC, doing business as Cowboy Toyota and Cowboy Scion. The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a motor vehicle dealer that engaged in substantial Spanish-language advertising, but only provided disclosures in fine-print English. According to the FTC complaint, respondent advertised that consumers could purchase or lease advertised vehicles at certain favorable terms prominently stated in its advertisements. The complaint alleges that respondent violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), because it misrepresented in its Spanish-language advertisements that (1) consumers could purchase new 2016 automobiles with no down payments, (2) that advertised low monthly payments were available to those who financed automobile purchases, (3) that advertised interest rates, monthly payments, and other terms were available to consumers with bad credit, and (4) that certain new 2016 model year Toyotas were available for purchase in 2017. This information would be material to consumers in deciding whether to visit respondent's dealership and whether to purchase or lease an automobile from respondent.

The complaint also alleges that respondent's credit sale advertisements violated the Truth in Lending Act (TILA) and Regulation Z by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondent's advertisements prominently stated the amount of the finance charge and the number of payments or period of repayment for certain vehicles—all triggering terms under the TILA—but failed to disclose, or unclearly and inconspicuously disclosed at the bottom of the ad in much smaller type, the required information

Analysis to Aid Public Comment

set forth by the TILA. Finally, the complaint alleges that respondent's leasing advertisements violated the Consumer Leasing Act (CLA) and Regulation M by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondent's advertisements prominently stated the monthly payment amounts for certain vehicles—a triggering term under the CLA—but failed to disclose, or unclearly and inconspicuously disclosed at the bottom of the ad in much smaller type, the required information set forth by the CLA.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future.

- Definition B. of the order defines “clearly and conspicuously” to mean that required disclosures must be difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including that disclosures must appear in the same language as the representation requiring the disclosure is made (*e.g.* Spanish advertisement → Spanish disclosure).
- Part I.A.1. provides that respondent shall not misrepresent the cost of financing the purchase of an automobile, including by misrepresenting the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment.
- Part I.A.2. provides that respondent shall not misrepresent the cost of leasing an automobile, including by misrepresenting the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments.
- Part I.B. provides that respondent shall not misrepresent any qualification or restriction on the consumer's ability to obtain the represented financing or leasing terms, including any qualification or restriction based on the consumer's credit score or credit history.

Analysis to Aid Public Comment

- Part I.C. provides that respondent shall not represent any financing or leasing term, unless the representation is non-misleading, and the advertisement clearly and conspicuously discloses all qualifications or restrictions on the consumer's ability to obtain the represented financing or leasing term, including any qualifications or restrictions that respondent's lender, lessor, or any other entity may impose based on a consumer's credit score or credit history. Additionally, if a majority of consumers likely will not be able to meet a credit score qualification or restriction stated in the advertisement, respondent must clearly and conspicuously disclose that fact.
- Part I.D. provides that respondent shall not misrepresent the number of vehicles, makes, or models that are available for purchase or lease.
- Part I.E. provides that respondent shall not misrepresent any other material fact about the price, sale, financing, or leasing of any automobile.
- Part II of the order addresses the TILA and Regulation Z allegations by prohibiting credit sale advertisements that:
 - A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 - o The amount or percentage of the down payment;
 - o The terms of repayment; and
 - o The annual percentage rate, using the term "annual percentage rate" or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or

Analysis to Aid Public Comment

- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term; or
 - C. Fail to comply in any respect with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667f.
- Part III of the order addresses the CLA and Regulation M allegations by prohibiting lease advertisements that:
 - A. State the amount of any payment or that any or no initial payment is required at lease inception, without disclosing clearly and conspicuously the following terms:
 - o that the transaction advertised is a lease;
 - o the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 - o the number, amounts, and timing of scheduled payments;
 - o whether or not a security deposit is required; and
 - o that an extra charge may be imposed at the end of the lease term where the consumer’s liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.
 - B. Fail to comply in any respect with Regulation M, 12 C.F.R. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.
 - Part IV requires respondent to provide copies of the order to certain personnel and to obtain acknowledgments of receipt.

Analysis to Aid Public Comment

- Part V requires respondent to file compliance reports with the Commission, including notices regarding changes in corporate structure that might affect compliance obligations under the order. Part VI requires respondent to create certain records for 15 years and to retain them for 5 years. Part VII provides the Commission certain mechanisms to monitor respondent's compliance with the order. Part VIII is a provision that "sunsets" the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Complaint

IN THE MATTER OF

**ALIMENTATION COUCHE-TARD INC.
AND
CROSSAMERICA PARTNERS LP**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4631; File No. 171 0207
Complaint, November 21, 2017 – Decision, January 5, 2018*

This consent order addresses the \$130 million acquisition by Alimentation Couche-Tard Inc. (“ACT”) and CrossAmerica Partners LP (“CAPL”) of certain assets of Jet-Pep, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for the retail sale of gasoline and diesel in three local markets in Alabama. The consent order requires ACT and CAPL must divest to a Commission-approved buyer (or buyers) certain Jet-Pep retail fuel outlets and related assets in three local markets in Alabama.

Participants

For the *Commission*: Ashley Masters, Christina Shackelford,
and Kara Todd.

For the *Respondents*: Brian Byrne and David I. Gelfand,
Cleary Gottlieb Steen & Hamilton LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Alimentation Couche-Tard Inc. and CrossAmerica Partners LP have entered into agreements to acquire certain assets of Jet-Pep, Inc., that such acquisitions, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a